



DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2011-0108]

RIN 1601-ZA11

Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may generally only approve petitions for H-2A and H-2B nonimmigrant status for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. Each such notice shall be effective for one year after its date of publication. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 86 countries whose nationals are eligible to participate in the H-2A program and 87 countries whose nationals are eligible to participate in the H-2B program for the coming year.

DATES: The designations in this notice are effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and shall be without effect on November 10, 2023.

FOR FURTHER INFORMATION CONTACT: Ihsan Gunduz, Office of Strategy, Policy, and Plans, Department of Homeland Security, Washington, DC 20528, (202) 282-9708.

SUPPLEMENTARY INFORMATION:

Background:

Generally, USCIS may approve H-2A and H-2B petitions for nationals of only those countries that the Secretary of Homeland Security, with the concurrence of the Secretary of

State, has designated as participating countries.¹ Such designation must be published as a notice in the **Federal Register** and expires after one year. In designating countries to include on the lists, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1). Examples of specific factors serving the U.S. interest that are taken into account when considering whether to designate or terminate the designation of a country include, but are not limited to: fraud (e.g., fraud in the H-2 petition or visa application process by nationals of the country, the country's level of cooperation with the U.S. government in addressing H-2 associated visa fraud, and the country's level of information sharing to combat immigration-related fraud), nonimmigrant visa overstay² rates for nationals of the country (including but not limited to H-2A and H-2B nonimmigrant visa overstay rates), and non-compliance with the terms and conditions of the H-2 visa programs by nationals of the country.

As previously indicated, *see* 86 FR 2689; 86 FR 62559, in evaluating the U.S. interest,

¹ With respect to all references to "country" or "countries" in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that "[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." 22 U.S.C. 3303(b)(1). Accordingly, all references to "country" or "countries" in the regulations governing whether nationals of a country are eligible for H-2 program participation, 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1), are read to include Taiwan. This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

² An overstay is a nonimmigrant lawfully admitted to the United States for an authorized period, but who remained in the United States beyond his or her authorized period of admission. U.S. Customs and Border Protection (CBP) identifies two types of overstays: 1) individuals for whom no departure was recorded (Suspected In-Country Overstays), and 2) individuals whose departure was recorded after their authorized period of admission expired (Out-of-Country Overstays). For purposes of this Federal Register Notice, DHS uses Fiscal Year 2021 CBP nonimmigrant overstay data for the H-2A and H-2B nonimmigrant visa categories and the Fiscal Year 2020 Entry/Exit Overstay Report for all other visa categories. *See*: https://www.dhs.gov/sites/default/files/2021-12/CBP%20-%20FY%202020%20Entry%20Exit%20Overstay%20Report_0.pdf.

the Secretary of Homeland Security, with the concurrence of the Secretary of State, will generally ascribe a negative weight to evidence that a country had a suspected in-country visa overstay rate of 10 percent or higher with a number of expected departures of 50 individuals or higher in either the H-2A or H-2B classification according to U.S. Customs and Border Protection overstay data, and generally, with the concurrence of the Secretary of State, will terminate designation of that country from the H-2A or H-2B nonimmigrant visa program, as appropriate, unless, after consideration of other relevant factors, it is determined not to be in the U.S. interest to do so.

Similarly, DHS recognizes that countries designated under long-standing practice by U.S. Immigration and Customs Enforcement (ICE) as “At Risk of Non-Compliance” or “Uncooperative” with removals based on ICE data put the integrity of the immigration system and the American people at risk. Therefore, unless other favorable factors in the U.S. interest outweigh such designations by ICE, the Secretary of Homeland Security, with the concurrence of the Secretary of State, generally will terminate designation of such countries from the H-2A and H-2B nonimmigrant visa programs. Because there are separate lists for the H-2A and H-2B categories, it is possible that, in applying the above-described regulatory criteria for listing countries, a country may appear on one list but not on the other.

Even where the Secretary of Homeland Security has determined to terminate or decided not to designate a country, DHS, through USCIS, may allow, on a case-by-case basis, a national from a country that is not on the list to be named as a beneficiary of an H-2A or H-2B petition based on a determination that it is in the U.S. interest for that individual noncitizen to be a beneficiary of an H-2 petition. Determination of such U.S. interest will take into account factors, including but not limited to: 1) evidence from the petitioner demonstrating that a worker with the required skills is not available either from among U.S. workers or from among foreign workers from a country currently on the list described in 8 CFR 214.2(h)(5)(i)(F)(1)(i) (H-2A nonimmigrants) or 214.2(h)(6)(1)(E)(1) (H-2B nonimmigrants), as applicable; 2) evidence that

the beneficiary has been admitted to the United States previously in H-2A or H-2B status; 3) the potential for abuse, fraud, or other harm to the integrity of the H-2A or H-2B visa program through the potential admission of a beneficiary from a country not currently on the list; and 4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(ii) and 8 CFR 214.2(h)(6)(i)(E)(2).

In December 2008, DHS published the first lists of eligible countries for the H-2A and H-2B Visa Programs in the **Federal Register**. These notices, “Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A Visa Program,” and “Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2B Visa Program,” designated 28 countries whose nationals were eligible to participate in the H-2A and H-2B programs. *See* 73 FR 77043 (Dec. 18, 2008); 73 FR 77729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2009, and January 18, 2009, respectively. Since the publication of the first lists in 2008, with the concurrence of the Secretary of State, has published a series of notices on a regular basis. *See* 75 FR 2879 (Jan. 19, 2010) (adding 11 countries to both programs); 76 FR 2915 (Jan. 18, 2011) (removing one country from and adding 15 countries to both programs); 77 FR 2558 (Jan. 18, 2012) (adding five countries to both programs); 78 FR 4154 (Jan. 18, 2013) (adding one country to both programs); 79 FR 3214 (Jan. 17, 2014) (adding four countries to both programs); 79 FR 74735 (Dec. 16, 2014) (adding five countries to both programs); 80 FR 72079 (Nov. 18, 2015) (removing one country from the H-2B program and adding 16 countries to both programs); 81 FR 74468 (Oct. 26, 2016) (adding one country to both programs); 83 FR 2646 (Jan. 18, 2018) (removing three countries from and adding one country to both programs); 84 FR 133 (Jan. 18, 2019) (removing two countries from and adding 2 countries to both programs, removing one country from only the H-2B program, and adding one country to only the H-2A program); 85 FR 3067 (January 17, 2020) (leaving the lists unchanged); 86 FR 2689 (Jan. 13, 2021) (removing two countries from both programs, removing one country from only the H-2A program, and adding one country to only the H-2B program);

and 86 FR 62559 (Nov. 10, 2021) (removing one country from only the H-2A program, adding one country to only the H-2B program, and separately adding five countries to both programs).

Determination of Countries with Continued Eligibility

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that the 85 countries previously designated to participate in the H-2A program in the November 10, 2021 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2A program. Additionally, the Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that the 86 countries previously designated to participate in the H-2B program in the November 10, 2021 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2B program. These determinations take into account how the regulatory factors identified above apply to each of these countries.

Consistent with the previous notices, nationals of non-designated countries may still be beneficiaries of approved H-2A and H-2B petitions upon the request of the petitioner if USCIS determines, as a matter of discretion and on a case-by-case basis, that it is in the U.S. interest for the individual to be a beneficiary of such petition. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(ii) and 8 CFR 214.2(h)(6)(i)(E)(2). USCIS may favorably consider a beneficiary of an H-2A or H-2B petition who is not a national of a country included on the H-2A or H-2B eligibility lists as serving the national interest, depending on the totality of the circumstances. Factors USCIS may consider include, among other things, whether a beneficiary has previously been admitted to the United States in H-2A or H-2B status and complied with the terms of the program. An additional factor for beneficiaries of H-2B petitions, although not necessarily determinative standing alone, would be whether the H-2B petition qualifies under section 1049 of the National Defense Authorization Act (NDAA) for FY 2018, Pub. L. 115-91, section 1045 of the NDAA for FY 2019, Pub. L. 115-232, or section 9502 of the NDAA for FY 2021, Pub. L. 116-283. However, any ultimate

determination of eligibility will be made according to all the relevant factors and evidence in each individual circumstance.

Countries Now Designated as Eligible

The Secretary of Homeland Security has also determined, with the concurrence of the Secretary of State, the Kingdom of Eswatini (Eswatini) should be designated as an eligible country to participate in both the H-2A and H-2B nonimmigrant visa programs because its participation is in the U.S. interest consistent with the regulations governing these programs.

Nationals of Eswatini do not present significant visa overstay concerns and are generally compliant with the terms and conditions of all visa categories. Additionally, the Department of State (DOS) does not have significant fraud concerns associated with visa applications submitted by nationals of Eswatini. DOS believes that adding Eswatini to the H-2 eligible country lists would further strengthen an already strong relationship with the United States. Eswatini continues to be a valued partner and is working closely with DOS on the implementation of DOS Counterterrorism Bureau's Personal Identification Secure Comparison and Evaluation System (PISCES) to combat transnational crime and improve interdiction capabilities at major border crossings. On August 10, 2022, the United States Ambassador to Eswatini and Government of Eswatini National Commissioner of Police signed a Memorandum of Intent agreeing to move forward with the deployment of PISCES throughout Eswatini. Therefore, adding Eswatini to both the H-2A and H-2B eligible countries lists serves the U.S. interest.

Designation of Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1) and 215(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1) and 1185(a)(1)), I am designating, with the concurrence of the Secretary of State, the following countries as those whose nationals are eligible to participate in the H-2A nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Bosnia and Herzegovina
8. Brazil
9. Brunei
10. Bulgaria
11. Canada
12. Chile
13. Colombia
14. Costa Rica
15. Croatia
16. Republic of Cyprus
17. Czech Republic
18. Denmark
19. Dominican Republic
20. Ecuador
21. El Salvador
22. Estonia
23. The Kingdom of Eswatini
24. Fiji
25. Finland
26. France

27. Germany
28. Greece
29. Grenada
30. Guatemala
31. Haiti
32. Honduras
33. Hungary
34. Iceland
35. Ireland
36. Israel
37. Italy
38. Jamaica
39. Japan
40. Kiribati
41. Latvia
42. Liechtenstein
43. Lithuania
44. Luxembourg
45. Madagascar
46. Malta
47. Mauritius
48. Mexico
49. Monaco
50. Montenegro
51. Mozambique
52. Nauru

53. The Netherlands
54. New Zealand
55. Nicaragua
56. North Macedonia (formerly Macedonia)
57. Norway
58. Panama
59. Papua New Guinea
60. Paraguay
61. Peru
62. Poland
63. Portugal
64. Romania
65. Saint Lucia
66. San Marino
67. Serbia
68. Singapore
69. Slovakia
70. Slovenia
71. Solomon Islands
72. South Africa
73. South Korea
74. Spain
75. St. Vincent and the Grenadines
76. Sweden
77. Switzerland
78. Taiwan

79. Thailand
80. Timor-Leste
81. Turkey
82. Tuvalu
83. Ukraine
84. United Kingdom
85. Uruguay
86. Vanuatu

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1) and 215(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1) and 1185(a)(1)), I am designating, with the concurrence of the Secretary of State, the following countries as those whose nationals are eligible to participate in the H-2B nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Bosnia and Herzegovina
8. Brazil
9. Brunei
10. Bulgaria
11. Canada
12. Chile
13. Colombia

14. Costa Rica
15. Croatia
16. Republic of Cyprus
17. Czech Republic
18. Denmark
19. Dominican Republic
20. Ecuador
21. El Salvador
22. Estonia
23. The Kingdom of Eswatini
24. Fiji
25. Finland
26. France
27. Germany
28. Greece
29. Grenada
30. Guatemala
31. Haiti
32. Honduras
33. Hungary
34. Iceland
35. Ireland
36. Israel
37. Italy
38. Jamaica
39. Japan

40. Kiribati
41. Latvia
42. Liechtenstein
43. Lithuania
44. Luxembourg
45. Madagascar
46. Malta
47. Mauritius
48. Mexico
49. Monaco
50. Mongolia
51. Montenegro
52. Mozambique
53. Nauru
54. The Netherlands
55. New Zealand
56. Nicaragua
57. North Macedonia (formerly Macedonia)
58. Norway
59. Panama
60. Papua New Guinea
61. Peru
62. The Philippines
63. Poland
64. Portugal
65. Romania

66. Saint Lucia
67. San Marino
68. Serbia
69. Singapore
70. Slovakia
71. Slovenia
72. Solomon Islands
73. South Africa
74. South Korea
75. Spain
76. St. Vincent and the Grenadines
77. Sweden
78. Switzerland
79. Taiwan
80. Thailand
81. Timor-Leste
82. Turkey
83. Tuvalu
84. Ukraine
85. United Kingdom
86. Uruguay
87. Vanuatu

This notice does not affect the current status of noncitizens who at the time of publication of this notice hold valid H-2A or H-2B nonimmigrant status. Noncitizens currently holding such status, however, will be affected by this notice should they seek an extension of stay in the H-2 classification, or a change of status from one H-2 status to another, for employment on or after

the effective date of this notice. Similarly, noncitizens holding nonimmigrant status other than H-2 are not affected by this notice, but will be affected by this notice if they seek a change of status to H-2 on or after the effective date of this notice.

Nothing in this notice limits the authority of the Secretary of Homeland Security or his designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

Alejandro N. Mayorkas,

Secretary of Homeland Security.

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